

Motion M/L Void (12/14)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re Lois Forsythe)
) Case No. 16-52886
) Chapter 13
) Judge Charles M. Caldwell

Debtor/s

**MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS
WHOLLY UNSECURED AND VOID**

Lois Forsythe (the "Debtor," whether individually or collectively)
moves the court, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a) and 1327(c), and Federal Rules of
Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/lien of
Wells Fargo Bank, NA successor by merger to Wells Fargo Financial Bank (the "Creditor")
is wholly unsecured and void.

Memorandum In Support

(1) The Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on
April 30, 2016 (the "Petition Date").

(2) As of the Petition Date, the Debtor was the owner of the following real property located at
1729 Flint Lane, Coshocton, OH 43812 (the "Property").
The Debtor owns the Property

in fee simple.

☒ A legal description of the Property is attached as Exhibit A.

(3) The value of the Property as of the Petition Date, as set forth in the appraisal filed with the Court
at Doc. 8, was \$ 162,000.00.

(4) The Debtor's interest in the Property as of the Petition Date was \$ 162,000.00.

(5) As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts
specified and in the relative priority set forth below:

First mortgage/lien:

Wells Fargo Home Mortgage
in the amount of \$ 174,573.41. The first mortgage/lien was obtained by the mortgagee/
lienholder on January 8, 2008. The first mortgage/lien was filed of record on
January 16, 2008, in the Office of the Recorder, Coshocton County Recorder,
as Instrument Number Book 462, Page 123 Official Records.

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The Creditor's mortgage/lien sought to be avoided is in the amount of \$ 4,842.00 . This mortgage/lien was obtained by the Creditor on January 8, 2008 . This mortgage/lien was filed of record on January 30, 2008 , in the Office of the Recorder, Coshocton County Official Records , as Instrument Number _____ Book 462, Page 962 _____ .

(6) Value of the property:	\$ <u>162,000.00</u>
Total amount of all mortgages/liens superior to the Creditor's mortgage/lien:	\$ <u>174,573.41</u>

(7) The amount of the mortgage(s)/lien(s) senior to the mortgage/lien to be avoided exceeds the value of the Property. As a result, there is no equity to which the Creditor's mortgage/lien may attach, and the Creditor's mortgage/lien is wholly unsecured and void under the combined effect of 11 U.S.C. §§ 506(a), and the terms of the Debtor's plan. *See Lane v. Western Interstate Bancorp. (In re Lane)*, 280 F.3d 663 (6th Cir. 2002).

(8) Unless otherwise ordered, the claim of the Creditor, if filed, shall be allowed and paid only as an unsecured nonpriority claim and shall be treated under the Debtor's Chapter 13 plan in the same manner as all other unsecured nonpriority claims.

(9) Upon discharge _____ , the mortgage/lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the the mortgage/lien, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the Creditor's mortgage/lien.

WHEREFORE, the Debtor requests that the court grant the Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Respectfully submitted,

/s/ Jetta Mencer
JETTA MENCER (0013024)
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Notice of Motion

Motion M/L Void (12/14)

Debtor has filed a Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to

United States Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215

OR your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Frank M. Pees, 130 E. Wilson Bridge Road, Suite 200, Worthington, Ohio 43085

Jetta Mencer, One S. Park Place, Newark, OH 43055

Office of the US Trustee, 170 N. High Street, Suite 200, Columbus, OH 43215-2403

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting the relief without further hearing or notice.

Certificate of Service

I hereby certify that true and accurate copies of the foregoing Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void and Notice of Motion were served on August 18, 2016 on the following registered ECF participants, electronically through the court's ECF System at the email address registered with the Court:

And on the following parties by regular U.S. Mail:

Wells Fargo Bank, N.A. Home Equity Group, 1 Home Campus X2303-01A, Des Moines, IA 50328-0001

Wells Fargo Home Mortgage, 3201 N 4th Ave, Sioux Falls SD 57104

And on the following parties by certified mail, return receipt requested:

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/s/ Jetta Mencer

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200800000393
Filed for Record in
COSHOCKTON COUNTY, OHIO
DAVID H DILLY
01-30-2008 At 09:45 am.
MTG 36.00
OR Book 462 Page 962 - 964

**ADDENDUM A
TO
MORTGAGE**

Description of Property

LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS ALL THAT CERTAIN PROPERTY SITUATED IN CITY OF COSHOCTON IN THE COUNTY OF COSHOCTON, AND STATE OF OH AND BEING DESCRIBED IN A DEED DATED 08/04/2004 AND RECORDED 08/08/2004 IN BOOK 346 PAGE 102 AMONG THE LAND RECORDS OF THE COUNTY AND STATE SET FORTH ABOVE AND REFERENCED AS FOLLOWS:

BEING LOT NO. 4784 IN FLINT ESTATES SUBDIVISION AS FOUND IN PLAT BOOK 4, PAGE 83, COSHOCTON COUNTY PLAT RECORDS.

PARCEL NO. 043-00005753-05

Exhibit A